

REMARKS/ARGUMENTS

Claim Status

Claims 1-12 are pending. Claim 1 stands rejected under 35 U.S.C. § 102 as being anticipated by U.S. Patent No. 3,616,150 to Borge, hereinafter "Borge." Claims 1-12 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,344,707 to Snyder, hereinafter "Snyder" in view of Borge.

35 U.S.C. § 102 Rejection

Claim 1 stands rejected under 35 U.S.C. § 102 as being anticipated by U.S. Patent No. 3,616,150 to Borge, hereinafter "Borge."

Independent claim 1 includes features that are patentable over the cited reference, namely:

1. (Amended) An insulating material comprising a *non-woven blend* comprising a *polyester filling fibre and a cellulosic fibre* obtained by an organic spinning process, the material formed into a ***form selected from the group consisting of a padding, a stuffing, and a filling.*** (emphasis added)

The examiner cites Borge at col. 2, ll. 6 to 39 for the proposition that Borge anticipates the claim. While that passage does refer to blends of natural fibers (e.g., cellulosic fibers) and synthetic fibers (e.g., polyesters), such materials are described as being for (a) ***the outer layer*** of the article and (b) comprising ***fabric*** formed from such a blend. The passage at column 2, lines 3 to 5 reads the "outer layer terephthalate; ***laminated (sic)*** article can be either a woven, knitted or non-woven ***fabric*** comprised of natural fibers, synthetic fibers and blends thereof." (emphasis added) The attached dictionary extract shows the definition of fabric to be "a wove material; a textile" or "other material resembling a woven cloth." It is therefore clear that Borge's disclosed blends of natural fibers and synthetic fibers are restricted to a ***fabric*** material forming a ***layer*** of a ***laminated*** article.

In contrast to the disclosure of Borge, claim 1 includes the feature that material is "formed into a form selected from the group consisting of a padding, a stuffing and a filling." In other words, claim 1 recites a material that is to be *enclosed* by another material, otherwise it could not be used as a padding, stuffing or filling. This is very different from Borge which

only discloses a blended material which forms the *outer layer* of a laminated fabric composition. A person of skill in the art would not consider such a disclosure to be included within the definition of a padding, stuffing or filling as recited in claim 1. Indeed, in numbered paragraph 18 the examiner himself states that “Borge describes an insulation material *fabric*.” (emphasis added). A person skilled in the art would appreciate that such a material is very different from the padding, stuffing and filling, as recited by the claims.

Finally, in the penultimate sentence of numbered section 18 of the Office Action the examiner states that “Borge describe the laminated fabrics can be used in coats and other garments *which would correspond to padding or stuffing or filling*.” With respect, Borge clearly only discloses that the blended material can be used as “the outer layer of a laminated fabric composition” and to state that this *would* correspond to padding or stuffing or filling, it is respectfully submitted, is factually incorrect and moreover, legally irrelevant.

A cited reference may be relied on for all that it would have reasonably suggested to one having ordinary skill in the art, including nonpreferred embodiments. *Merck & Co. v. Biocraft Labs.*, 874 F.2d 804, 10 USPQ2d 1843 (Fed Cir.), *cert. denied*, 493 US 975 (1989). This does not, however, mean that references can be relied on to disclose or suggest *non-disclosed embodiments*. The real question is whether a person of ordinary skill in the art would recognize the laminated fabric as being suggested for use as a padding, stuffing, or filling. The examiner’s all encompassing statement that use in coats *would* correspond to a padding, stuffing, or filling is not relevant because this is not what the law asks. If such were the law, this statement could be used for the clearly illogical proposition that the use of a laminated fabric is suggested for use as a zipper or a button (or even a jogging reflector) on a coat. As such, applicant respectfully submits that Borge does not disclose or suggest a non-woven blend comprising a polyester filling fibre and a cellulosic fibre obtained by an organic spinning process, the material formed into a form selected from the group consisting of a padding, a stuffing, and a filling, as recited by the claim.

Accordingly, applicant submits that the cited reference does not anticipate claim and respectfully requests reconsideration and withdrawal of the rejection of claim 1 under 35 U.S.C. § 102.

Claims 1-12 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,344,707 to Snyder, hereinafter "Snyder" in view of Borge.

Independent claim 1 includes features that are patentable over the cited references, either taken alone or in combination, namely:

1. (Amended) An insulating material comprising a *non-woven blend* comprising a *polyester filling fibre and a cellulosic fibre* obtained by an organic spinning process, the material formed into a *form selected from the group consisting of a padding, a stuffing, and a filling*. (emphasis added)

Snyder describes fiberballs for pillows and cushions. Snyder describes blending fibers that are mechanically different (Snyder c. 6, ll. 64-68). For example, Snyder describes blending a mechanically-crimped fiber with a low denier fiber. *Snyder does not disclose or suggest blending fibers of different composition*. In fact, Snyder discloses *only one fiber composition* - poly(ethylene terephthalate). "The invention is further described in the following Examples in which the fibers were *all made from poly(ethylene terephthalate)*." (Snyder c. 8, ll. 54-56) The examiner seems to contend that the suggestion to blend mechanically different fibers is the same as a suggestion to blend fibers of different composition. In support of this proposition the examiner states that "terms are given their broadest reasonable interpretation and blend can mean a mixture of at least two components which the prior art of record encompasses." Applicant is unsure whether the examiner is saying that *claim terms* are to be given their broadest reasonable interpretation or whether *terms in cited references* are to be given their broadest reasonable interpretation.

If the examiner is arguing that claim terms are to be given their broadest reasonable interpretation, applicant agrees that *claim terms* are to be given their broadest meaning. Applicant notes, however, that the claims clearly recite a *blend* comprising a *polyester filling fibre and a cellulosic fibre*, not simply a blend of any two components. Snyder does not disclose or suggest blends of different materials, as described above.

If the examiner is arguing that terms in the cited references are to be given their broadest reasonable interpretation, applicant respectfully disagrees and submits that cited references may be relied on for all that it would have reasonably suggested to one having ordinary skill in the art, including nonpreferred embodiments. *Merck & Co. v. Biocraft*

Labs., 874 F.2d 804, 10 USPQ2d 1843 (Fed Cir.), *cert. denied*, 493 US 975 (1989). This does not, however, mean that references can be relied on to disclose or suggest *non-disclosed embodiments*. As such, applicant respectfully submits that Snyder does not disclose or suggest blends of fibers of different materials.

A person having ordinary skill in the art would appreciate that the references in Snyder to “blends” of fibers relate to blends only of different deniers of polyester fibers and ***makes no reference whatsoever to a blend of a polyester filling fiber and a cellulosic fiber.***

Reference is made, for example, to column 4, line 60 to 65 which refers to the “advantages in providing pillows, cushions and like articles of fiber balls from blends of such mechanically-crimped fiberfill with minor amounts of subdenier fibers or lower denier fibers.” The reference to “such mechanically-crimped fiberfill” refers back to the passage at column 4, lines 32 to 58 which refers to “mechanically crimping a tow band of polyester filaments.”

Further reference is made to column 5, line 7 to 10 which refers to “certain blends, using minor amounts of low denier fibers.” This is in the context of the aforementioned passage at column 4, lines 61 to 65 which discusses blends of mechanically crimped polyester filaments.

Further reference is made to column 8, lines 22 to 23 which states that “the polyester fibers used in the invention are desirably coated with a slickener.” Further reference is made to column 8, lines 34 to 56 which states that “the invention is further described in the following Examples in which the fibers were all made from poly-(ethylene terephthalate).” A subsequent example then discusses blends of higher denier fibers and subdenier fibers ***of the same material.*** See, for example, column 9, lines 40 to 70 and, as a comparison, the reference at column 9, lines 32 to 33 to fiberfill that is made similarly, but from 100% of the higher denier fiber fills.

Moreover, in column 10, lines 15 to 17, reference is made to the preparation of “various blends” all of which are formed from higher denier fibers and subdenier fibers ***of the same material*** blended together in different proportions.

Thus, it is a completely untenable position for the examiner to infer that Snyder even contemplates the possibility of blending fibers of different compositions and even more unfair to consider that Snyder had contemplated a non-woven blend comprising a polyester

filling fiber and a cellulosic fiber obtained by an organic spinning process, as recited in claim

1. That is, the examiner is relying on an undisclosed embodiment that is not suggested.

It is perhaps worth reiterating at this stage that the choice of a cellulosic fiber such as lyocell goes against conventional teachings since such fibers were not normally associated with padding, stuffing, and filling at the filing date of this application, because such fibers tend to be flat.

Furthermore, it is very significant to note that when the two fibers (the polyester and the said cellulosic fiber) are blended, the resultant thermal efficiency is greater than the sum of the two components. In other words, the two fibers in the blend produce a synergistic and very unexpected effect which, it is respectfully submitted, strongly supports the contention that the claims are nonobvious over the cited references. See for example, application as originally filed at p. 1, l. 20 – p. 2, l. 8; p. 2, ll. 11-14; and p. 4, l. 3 – p. 7, l. 10.

Nor is there any suggestion or motivation for a person of ordinary skill in the art to combine the teachings of Snyder and Borge. Snyder clearly refers to “fiber balls for filling uses in pillows, cushions and for like support purposes” (see, for example, column 1, lines 30 to 33, column 1, lines 36 to 39, column 1, line 51, column 1, line 59, column 2, lines 53 to 60, column 3, lines 37 to 44, column 3, lines 62 to 64, column 4, lines 61 to 64, column 5, lines 58 to 63, column 6, line 7, column 6, line 28, column 8, lines 30 to 36, column 11, lines 15 to 20, column 11, line 41).

In contrast, Borge relates to laminated articles. For example, reference is made to the following portion of Borge:

Column 1, line 1: “LAMINATED ARTICLE”;

Column 1, line 5 : “This invention relates to laminated articles”;

Column 1, line 7 to 8: “The invention further relates to a laminated fabric composition”;

Column 1, lines 25 to 27: “The use of laminated fabrics for the preparation of wearing apparel and other textile articles has increased significantly in recent years”;

Column 1, lines 52 to 55: “The unique advantages of laminated fabrics are maximized”;

Column 1, lines 72 to 75: "A fabric having unproved thermal properties can be prepared by bonding an outer layer of a textile fabric to an inner layer of knitted fabric prepared from a spun yarn";

Column 2, line 3: "The outer layer of terephthlate; laminated article" (*sic*);

Column 2, lines 44 and 45: "The inner and outer layers of fabric";

Column 2, lines 61 to 63: "In the process of the this invention, the adhesive is preferably applied to portions only of the meetings surfaces of the fabrics to be laminated";

Column 2, lines 68 to 69: "The adhesive can be applied to one or both of the fabrics to be laminated";

Column 3, lines 17 to 18: "The laminated fabric is then passed into a drying unit";

Column 3, lines 46 to 49: "A 60-inch wide woven fabric ... is laminated to a 60-67 inch wide ...";

Column 3, lines 61 to 63: "A 60 inch wide ... fabric .., is laminated to a 60 - 65 inch wide ...";

Column 4, lines 37 to 39: ""The laminated articles of this invention"; and

Claim 1, line 1: "A laminated article ...".

Thus, a person skilled in the art of fillings would not seek to overcome any of the problems associated with Synder by looking to Borge because, quite simply, Borge does not discuss or contemplate the use of such materials as fillings. Indeed, even if the person skilled in the art were to look at Borge, he or she would be positively discouraged from using any of the teachings thereof, since the fabrics disclosed therein could not be used as the type of filling contemplated by Synder.

The examiner seems to be arguing that the references are combinable because there is "no defined structure for the fabric." As described above, however, fabric is defined as a "material resembling woven cloth." This does not include a *padding*, a *stuffing*, and a *filling*, as recited by the claims. Further, the specification of Borge clearly defines a structure for the fabric (Column 3, lines 46 to 49: "A 60-inch wide woven fabric ... is laminated to a 60-67 inch wide ..."; and Column 3, lines 61 to 63: "A 60 inch wide ... fabric .., is laminated to a 60 - 65 inch wide ...").

Thus, it is respectfully submitted that a person skilled in the art of fiber fillings would not be aware of, and would not look to, Borge to overcome any problems. Therefore, it is not

appropriate to combine the teachings of the cited references and it is therefore respectfully submitted that the claims are not obvious in the light of the cited references.

Assuming *arguendo* that there is some motivation for combining the teachings of Snyder and Borge, the result would not be the claimed features. As discussed previously, Borge discloses, at most, a *layered fabric* formed from blends of different fibers. A hypothetical combination of Borge and Snyder based on the teachings of those respective documents would therefore result in a casing formed from a laminated fabric of a blend of different types of fibers of Borge filled with the single material filling of Snyder. This is very different from the claims. In any case, it is believed that a person skilled in the art would not even consider the two documents together, for the reasons stated above.

Accordingly, applicant submits that the cited references, either taken alone or in combination, do not render independent claim 1 as obvious. Additionally, inasmuch as dependent claims 2-12 (which have also been rejected over the cited references) are dependent on claim 1, these claims are patentable over the cited references, at least by virtue of their dependency. Accordingly, applicant respectfully requests reconsideration and withdrawal of the rejections of claims 1-12 under 35 U.S.C. § 103.

Conclusion

In view of the foregoing amendments and remarks, applicant respectfully submits that the present application is in condition for allowance. Reconsideration of the application and an early Notice of Allowance are respectfully requested. In the event that the examiner cannot allow the present application for any reason, the examiner is encouraged to contact the undersigned attorney, Raymond N. Scott Jr. at (215) 564-8951, to discuss resolution of any remaining issues.

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